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Kentucky Oil Technology, N.V. and Defendants
Peter Besselink and Memory Metal Holland, B.V.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MEMRY CORPORATION,

Plaintiff,

v.

KENTUCKY OIL TECHNOLOGY, N.V.,
PETER BESSELINK, MEMORY METALS
HOLLAND, B.V.,

Defendants.

KENTUCKY OIL TECHNOLOGY, N.V.,

Counterclaimant,

v.

MEMRY CORPORATION and
SCHLUMBERGER TECHNOLOGY
CORPORATION,

Counterdefendants.

Case No. CV 04-03843 RMW (HRL)

**[[ORDER: (1) DISMISSING
FIFTH COUNTERCLAIM FOR
CORRECTION OF INVENTORSHIP
WITHOUT PREJUDICE AS TO THREE
PATENTS AND WITH PREJUDICE AS
TO SEVEN PATENTS; AND (2)
DISMISSING REMAINING
COUNTERCLAIMS WITH PREJUDICE
AS AGAINST SCHLUMBERGER
TECHNOLOGY CORPORATION ONLY**

Date: June 6, 2008

Time: 9:00 a.m.

Ctrm.: 6

The Honorable Ronald M. Whyte, District
Judge

On June 6, 2008, the Court heard the motion of defendant and counterclaimant Kentucky Oil Technology, N.V. ("Kentucky Oil"), brought pursuant to its settlement with counterdefendant Schlumberger Technology Corporation ("Schlumberger"): (1) to dismiss its Fifth Counterclaim for joinder of Peter Besselink as co-inventor of certain United States patents in its entirety, without prejudice as to United States Patent Nos. 6,772,836 (the "'836 Patent"), 6,799,637 (the "'637 Patent"), and 7,185,709 (the "'709 Patent") and with prejudice as to the seven other patents identified in the Fifth Counterclaim; and (2) to dismiss its remaining counterclaims as against Schlumberger alone (but not as against plaintiff and counterdefendant Memry Corporation ("Memry")), with prejudice. Kentucky Oil was represented by Michael H. Bierman of Luce, Forward, Hamilton & Scripps LLP. Memry was represented by William J. Cass of Cantor Colburn LLP. Schlumberger was represented by Eileen R. Ridley of Foley & Lardner LLP.

After consideration of the papers in support of and in opposition to Kentucky Oil's motion and of the argument of counsel, and notwithstanding Memry's opposition to the motion, and good cause being found, IT IS ORDERED pursuant to Fed. R. Civ. P. 41(a)(2) that:

(1) Kentucky Oil's Fifth Counterclaim for joinder of Mr. Besselink as co-inventor of certain United States patents is dismissed in its entirety, without prejudice as to the '836, '637, and '709 Patents and with prejudice as to the seven other patents identified in that Counterclaim, provided that:

(a) Kentucky Oil shall, within five Court days of the entry of this Order, provide Memry a written covenant not to file a lawsuit against Memry under 35 U.S.C. § 256 for correction of inventorship of the '836, '637, and '709 Patents, in the form attached as Exhibit A hereto; and


(b) Schlumberger shall, within five Court days of the entry of this Order, provide Memry of a copy of the Settlement Agreement and Mutual Release (the "Settlement Agreement") dated April 15, 2008 entered into by parties including Schlumberger and Kentucky Oil, provided that Memry shall treat the Settlement

1 Agreement as Confidential – Attorneys’ Eyes Only Discovery
2 Materials pursuant to the terms of the Stipulated Protective Order
3 and Addendum to Protective Order e-filed by the Court on March 1,
4 2005 [Docket 40];

5 (2) Kentucky Oil’s remaining counterclaims are dismissed as against
6 Schlumberger (but not as against Memry), with prejudice; and

7 (3) each party to this action shall bear its own attorneys’ fees, costs, and
8 expenses incurred in connection with the dismissed counterclaims.

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10 DATED: 7/16, 2008


The Honorable Ronald M. Whyte
United States District Judge

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